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February 29, 1956

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CONCORD, N.H.

Mr. Winfield J. Phillips  
Bank Commissioner  
State House  
Concord, New Hampshire

Dear Mr. Phillips:

In a letter of February 16, 1956, Howard B. Lane, Esq., attorney for two Keene savings banks advised that those banks wanted to declare an extra dividend of one-fourth of one per cent on April 1 of this year and probably continue it each six months thereafter besides their regular annual dividend of one and one-half per cent.

The banks would like to make this extra dividend apply annually on money in savings accounts that had been in the bank for at least one year.

You have asked whether it is possible to do that. I have advised you previously that the By-laws and Charter of the respective banks govern the situation.

With respect to the Cheshire County Savings Bank, Section 2 of its Charter authorizes the corporation to receive deposits and manage, use and improve the same " . . . and all deposits, together with the net income and profits thereof, may be withdrawn at such reasonable times, in such manner and proportions and subject to such equitable rules and regulations as said corporation may from time to time by its by-laws prescribe, not incompatible with the laws of the state."

Section 6 provides in part "No special deposits shall be received, or special rates of interest allowed to any depositor, but all the profits arising from

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said business shall be equitably divided among the depositors at such times and in such manner as the trustees may determine . . ."

"Equitably" is defined by Webster as "justly, fairly, impartially."

Accordingly, in view of the requirements of Article 6 of the Charter of Cheshire County Savings Bank, it is my opinion that the proposed extra dividend to only certain depositors of that bank may not be made.

The Charter of the Keene Savings Bank, Section 2 (Laws of 1895, chapter 264) provides ". . . all deposits may be withdrawn and the net income or profits of the deposits divided at such reasonable times, and in such manner and proportions, and subject to such equitable rules and regulations, as said corporation shall from time to time prescribe not incompatible with the laws of the state."

Article VI of the By-laws of Keene Savings Bank provides "the trustees shall make and establish such rules and regulations in regard to receiving deposits and paying out the same, and fix such rates of interest thereon and the time and manner of paying it as they may deem proper and reasonable."

It will be noted that "equitably" does not necessarily mean "equally."

Accordingly, the vote of the Trustees, August 8, 1955, is within the powers of the Charter of the Keene Savings Bank. The Charter of the Keene Savings Bank does not contain the prohibition against special rates of interest which is contained in the Charter of the Cheshire County Savings Bank.

Very truly yours,

George F. Nelson  
Assistant Attorney General

GFM:W

cc - Howard B. Lane, Esq.  
7 Main St.  
Keene, N. H.